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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,508	06/27/2003	Karl-Heinz Kuebler	VWS-556-A	9287

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EXAMINER

CAMPBELL, THOR S

ART UNIT PAPER NUMBER

3742

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/608,508	Applicant(s) KUEBLER ET AL.	
	Examiner Thor S. Campbell	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
 4a) Of the above claim(s) 28-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 11-27 is/are rejected.
- 7) ☒ Claim(s) 8-10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08/06/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-27, drawn to a heater apparatus.
- II. Claims 28-40, drawn to a method of making a fluid heater.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the heating apparatus of claims 1-6, and 15-27 can be made by a materially different process, e.g. attaching or "thermally coupling" the heating means to the outside of the thermally conductive mass instead of "mounting heater means in the thermally conductive mass". The methods of claims 28-33, 37 and 40 do not require the throughbores of claims 7-14, and the apparatus of claims 7-14 do not require that the mass be monolithic as in claims 34-36, 38-39.

During a conversation with Bill Hanlon on 5/20/04 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-27. Affirmation of this election must be made by applicant in replying to this Office action. Claims 27-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 18-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Roller et al. (US 4343988).

Roller discloses a heater apparatus for heating fluid, the heater apparatus comprising: a thermally conductive mass 1; heating means 3, the heating means comprising a plurality of heater elements mounted in the mass and thermally coupled to the thermally conductive mass, for imparting heat to the thermally conductive mass; and a fluid flow path 6 formed in the mass between an inlet and an outlet, the fluid flow path substantially enveloping the heating means to absorb heat from the thermally conductive mass as fluid flows through the fluid flow path between the inlet and the outlet. It is noted that Roller discusses the heating plate made of thermally conductive mass of cast or extruded aluminum or aluminum alloy or equivalents known in the art.

Claims 1, 2, 16-17, 22-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Barkley et al. (US 4687907).

Barkley discloses a heater apparatus for heating fluid, the heater apparatus comprising: a thermally conductive mass 14, 16; thick film heating means 18, thermally coupled to the

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thermally conductive mass, for imparting heat to the thermally conductive mass; and a fluid flow path 24 formed in the mass between an inlet and an outlet, the fluid flow path substantially enveloping the heating means to absorb heat from the thermally conductive mass as fluid flows through the fluid flow path between the inlet and the outlet, wherein the fluid flow path defines a spirally shaped fluid flow path, wherein the fluid flow path comprises: a first flow path portion extending across one surface of the thermally conductive mass 14; and a second flow path portion extending across an opposed surface of the thermally conductive mass 16, the first and second flow path portions disposed in fluid flow communication, wherein the first and second flow path portions are disposed in fluid flow communication substantially at the center of the thermally conductive mass (col. 5, lines 32-45), the first flow path defines a spiral flow path extending radially inward from an inlet to a bore connecting the first flow path to the second flow path; and the second flow path defines a spirally shaped fluid flow path extending radially outward from the bore connecting the first flow path to the second flow path to the outlet, wherein the heating means 18 comprises: at least one heater element mounted in the mass 14, 16, wherein the heating means is disposed in the thermally conductive mass and substantially encompassed by the fluid flow path, further comprising: a controller for controlling the activation of the heating means.

Claims 1, 2, 7, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wu (US 6330395).

Wu discloses a heater apparatus for heating fluid, the heater apparatus comprising: a thermally conductive mass 1; heating means 3, the heating means mounted in the mass and thermally coupled to the thermally conductive mass, for imparting heat to the thermally

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conductive mass; and a fluid flow path 111-114 formed in the mass in the form of a plurality of throughbores between a first and second end, the fluid flow path providing at least one parallel flow path between an inlet and outlet.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barkley et al. in view of Rocchitelli (US 4508957).

Barkley discloses the claimed invention except the use in a vehicle window wash apparatus. Since Barkley and Rocchitelli share the same basic principles of operation, it would have been obvious to one of ordinary skill in the art to use the device of Barkley in a window wash application by attaching a fluid reservoir and a discharge device and since the Barkley device will give more even temperatures for exiting fluid.

Claims 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wu (US 6330395).

Wu discloses the claimed invention except the use of a plurality of heaters received in a plurality of bores and surrounded by the throughbores. This amounts to a duplication of essential working parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a plurality of heaters and bores, since it has been held that mere

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duplication of the essential working parts of a device involves only routine skill in the art. *St.*

Regis Paper Co. v. Bemis Co., 193 USPQ 8.

Allowable Subject Matter

Claims 8-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thor S. Campbell whose telephone number is 703-306-9042.

The examiner can normally be reached on Tue-Fri 5:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Denise Pothier can be reached on 703-308-0265. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TSC
5/28/04


THOR CAMPBELL
PATENT EXAMINER